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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,223	04/17/2004	Joseph J. Sacco	Sacco 1-1	1168
7590 Matthew J. Hodulk 9 Cross Brook Califon, NJ 07830		11/06/2007	EXAMINER AYRES, TIMOTHY MICHAEL	
			ART UNIT 3637	PAPER NUMBER
			MAIL DATE 11/06/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/826,223

Applicant(s)

SACCO ET AL.

Examiner

Timothy M. Ayres

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-20 is/are pending in the application.
- 4a) Of the above claim(s) 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-14 and 16-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Newly amended claim 15 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The pages in the shape of a character is considered a separate species from the one being examined and shown in the drawings.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 15 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-4, 6-8, and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear whether the applicant is claiming a apparatus or an apparatus in combination with a cabinet, door, and shelving. If the applicant intends to claim only the apparatus, then all recitation of the combination (shelves, door, and cabinet) must be removed from the body of the claim or referred to with language such as "adapted to" or "configured for". If the applicant intends to claim

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the combination, the claim preamble and body must be amended to reflect this, similar to claim 9. For examination purposes the combination has been assumed.

4. Claims 1-4, 6-14, and 16-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "generally thin profile" in claims 1, 9, 18, and 19 is a relative term which renders the claim indefinite. The term "generally thin profile" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. While describing the term as a size to allow the placement of the apparatus in an area between the door and the shelving of the cabinet, but since this area of the cabinet is not properly defined by structure, the term is considered to be indefinite.

5. Claims 1-4 and 6-8 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, the phrase "at least regions of some of the sheets of material are magnetically adheable to one another so that said sheets of material when magnetically adhered to one another may rotate as a unit" is indefinite. In order for the sheets to rotate as unit each of the sheets or at least the outer two need to have a region of magnetic material that aligns. In addition the term "some" is considered to include only at least one sheet, thereby making indefinite if only one sheet has

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magnetic material. Also, the phrase "magnetic material being of opposing magnetic polarity on alternating side of said sheets" is indefinite since as stated above said magnetic material has not been claimed as being on all the sheets. It should also be noted that the term "adhereable is being used" thereby not positively claimed as being adhered but just capable of adhering, allowing a structure such as taught by Engel that pushes the sheets that allows them to rotate as a unit, plus if the pages were flipped around they are adhereable.

6. Claims 9-14, 16, and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In order for the sheets to rotate as unit each of the sheets or at least the outer two need to have a region of magnetic material that aligns. In addition the term "some" is considered to include only at least one sheet, thereby making indefinite if only one sheet has magnetic material.

#### ***Claim Rejections - 35 USC § 103***

7. Claims 1, 2, 4, 6, 8-10, 12-14, 16, and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 3,089,745 to Postula in view of US Patent 1,326,832 to Baily, US Patent 3,228,133 to Baermann, and US Patent 4,852,282 to Selman. Postula teaches a stationary cabinet (10) having shelving (19) and a door(18). A pivotal shelving unit (20) is located between the sleeves (19) and the door. Postula does not expressly disclose a plurality of planar pages as claimed. Baily teaches a

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cabinet (1) that has a door (2) with a plurality of rigid sheet material or pages (5) for display. The pages (5) have hinge tubes/mechanism (6,9) integral formed such that a hinge pin (8) insertable therein. Note that it has been held that the term "integral is sufficiently broad to embrace constructions united by such means as fasteners and welding. *In re Hotte*, 177 USPQ 326, 328 (CCPA 1973). The hinge pin (8) is attached to the cabinet with a flange housing (7) by being inserted therein. The hinge mechanism (9) is offset at angles as seen in figure 2. At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the cabinet of Postula by replace rotating unit (20) as taught by Baily to display items such as children's work, recipe, or calendars. Postula in view of Baily does not expressly disclose the pages being attachable by a magnet, portions of the sheets having magnetic material therein, and the surface being erasable for non-permanent markers. Baermann teaches a board (A) comprised of magnetic material (10), a support plate (30) to provide stiffness, and a coating (60) as a decorative surface. The board (A) constructed so that letters can be displayed on its surface in a even horizontal line. As seen in figure 3A, the magnetic material (10) has north (22) and south (20) poles in an alternating pattern. At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the display apparatus by constructing the boards of the construction as taught by Baermann to allow magnetic letters to be aligned and display. Postula in view of Baily and Baermann does not expressly disclose the at least a surface with a erasable surface for non-permanent markers. Selman teaches a calendar for a refrigerator that has a surface adapted for erasably receiving writing ink thereon. At the time of the

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invention it would have been obvious for a person of ordinary skill in the art to modify the sheet/pages of Postula in view of Baily and Baermann by making the coating surface of erasable material for non-permanent markers as taught by Selman to allow the surface to be reusable.

8. Claims 3 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 3,089,745 to Postula in view of US Patent 1,326,832 to Baily, US Patent 3,228,133 to Baermann, and US Patent 4,852,282 to Selman as applied to claims 1, 2, 4, 6, 8-10, 12-14, 16, and 18-20 above, and further in view of US Patent 752,463 to Morris. Baily in view of Baermann and Selman discloses every element as claimed and discussed above except tab sections. Morris teaches a cabinet with pages (E) with tab sections on the edges to allow a user to access the correct page of the first aid manual. At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the sheets of Postula in view of Baily, Baermann, and Selman by adding tabs as taught by Morris to allow faster and easier access to the correct page.

9. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 3,089,745 to Postula in view of US Patent 1,326,832 to Baily, US Patent 3,228,133 to Baermann, and US Patent 4,852,282 to Selman as applied to claims 1, 2, 4, 6, 8-10, 12-14, 16, and 18-20 above, and further in view of US Patent 1,881,636 to Johnson. Postula in view of Baily, Baermann, and Selman discloses every element as claimed and discussed above except the pages includes a chalkboard surface. Johnson

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teaches a portable chalkboard with panels that are hingable together. At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify a page of Postula in view Baily, Baermann, and Selman by making a portion of the coating out of a chalkboard material as taught by Johnson to enable writing indicia on it.

10. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 3,089,745 to Postula in view of US Patent 1,326,832 to Baily, US Patent 3,228,133 to Baermann, and US Patent 4,852,282 to Selman as applied to claims 1, 2, 4, 6, 8-10, 12-14, 16, and 18-20 above, and further in view of US Patent 2,527,132 to Jackson. Postula in view of Baily, Baermann, and Selman discloses every element as claimed and discussed above except the hinge pin spring loaded. Jackson teaches rotating shelves with a shaft/hinge pin that is received in a flange housing (24) and is spring loaded (16). At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the apparatus of Postula in view of Baily, Baermann, and Selman by using the mounting mechanism that is spring loaded as taught by Jackson to make it easy to be removed or added in as a complete unit.

### ***Response to Arguments***

Applicant's arguments filed 10/12/07 have been fully considered but they are not persuasive. The applicant appears to be assuming a very specific cabinet structure and relationship of the door to the shelving. This structure is not claimed and Postula teaches the structure as claimed and having an area of a size sufficient to put the



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structure of Baily in the location as desired. Thus Baily is considered to have sheets of a "generally thin profile". Baermann does teach a region of magnetic material having alternating polarities as seen in figure 3. "Single" opposing polarities is not being claimed or disclosed in this application and it is inherent that sheets made with region of magnetic material as shown in figure 3 will adhere to one another.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

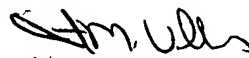
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy M. Ayres whose telephone number is (571) 272-8299. The examiner can normally be reached on MON-THU 8:00 - 5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TMA  
10/30/07



JANET M. WILKENS  
PRIMARY EXAMINER  
Art 3637